

Kevin Cummins
1123 7TH ST NE, Washington, DC 20002

Appeal No. 19550, “Appeal of ANC 6C”
1125 7TH ST NE (Square 886, Lot 35)
Hearing date: May 9, 2018

**STATEMENT IN OPPOSITION TO DCRA MOTIONS TO CONTINUE HEARING
AND TO INCORPORATE BY REFERENCE THE REVISED PERMIT**

I, Kevin Cummins, respectfully submit this statement in opposition to DCRA's Motion to Continue Hearing Until May 23, 2018 and Motion to Incorporate by Reference the Revised Permit Into this Appeal (Exhibit 36):

I am an Intervenor in Appeal No. 19550 and an adjoining homeowner directly impacted by the erroneous decision of the Zoning Administrator to approve permit B1706219 for the property located at 1125 7TH ST NE. In addition to the reasons described in Appellant’s Memorandum in Opposition (Exhibit 37), I urge the Board to summarily deny the DCRA motions for the following reasons:

SUMMARY

1. Chairman Hill publicly stated that there will not be another continuance;
2. The public decision of the Board to continue this hearing to May 9 is not superseded by the Secretary of the Board’s statement to DCRA;
3. After numerous continuances, all parties agreed to the Board’s decision to hold the hearing on May 9;
4. The issuance of a new building permit does not make this Appeal moot;
5. Incorporating a new permit by reference into this Appeal could deny or limit persons’ right of appeal to the Board of Zoning Adjustment; and
6. Incorporating the revised permit into this Appeal would not be in the interest of judicial economy.
7. The interest of judicial economy is not served by yet another continuance.

ARGUMENT

1. Chairman Hill publicly stated that there will not be another continuance.

On January 24, the Board decided at its public hearing to continue this Appeal to May 9 after considering Intervenor’s objection to that postponement. Chairman Hill then stated that “there

won't be another continuance" and that the Board would "move forward with this [Appeal] on May 9, one way or the other, whatever happens" (See January 24, 2018 transcript at page 21).

2. The public decision of the Board to continue this hearing to May 9 is not superseded by the Secretary of the Board's statement to DCRA.

The January 24, 2018 decision of the Board at a public hearing and Chairman Hill's statement above have more weight than DCRA's claim that "on April 18, 2018 the Secretary of the Board, Mr. Clifford Moy, confirmed that May 23, 2018 would be an acceptable date for a continued hearing in this appeal" (DCRA Motion to Continue, Exhibit 35 at page 1).

Intervenor was not aware of this meeting between DCRA and Mr. Moy, nor was he represented at the meeting. Any such statement by the Secretary of the Board on April 18 does not supersede the Board's decision to hold a hearing on this Appeal on May 9.

3. After numerous continuances, all parties consented to the Board's decision to hold the hearing on May 9.

ANC 6C filed this Appeal on May 30, 2017, and on July 24, 2017 the Board notified DCRA that a public hearing would take place on September 13, 2017 (Exhibit 9). The Board rescheduled the hearing for November 15, 2017 following a consent motion filed by DCRA (Exhibit 24). The Board then rescheduled the hearing for January 24, 2018 in response to DCRA's second consent motion to postpone the hearing (Exhibit 30). DCRA next filed a partial consent motion on January 19, 2018 to continue the hearing to May 9 (Exhibit 31).

At the January 24 public hearing, counsel for the Property Owner reaffirmed their consent to the May 9 hearing date. He stated that "we agreed to consent to a May 9th date.... We'll come prepared to have a hearing then and resolve all the zoning issues that need to be resolved" (January 24, 2018 transcript at page 18).

4. The issuance of a new building permit does not make this Appeal moot.

DCRA's issuance on April 18, 2018 of building permit B1805207 for 1125 7TH ST NE does not make this Appeal moot since DCRA accepts permit B1706219 as a valid permit authorizing construction at the subject property.

The claim in DCRA's Motion to Incorporate that "[permit B18052907] no longer authorizes the construction in the same manner at the Property found in [permit B1706219]" is misleading. DCRA has granted permission to Stony Creek Homes to build at 1125 7TH ST NE under two separate permits. The permit holder may now simply have the second option of building under a new permit B1805207.

5. Incorporating a new permit by reference into this Appeal could deny or limit persons' right of appeal to the Board of Zoning Adjustment.

Granting DCRA's motion to incorporate a new permit by reference into this Appeal could effectively deny or limit the right of persons affected by the issuance of B1805207 to seek its revocation by the Board. Under 11 DCMR Y section 302.2, a party has 60 days from a permit's issuance to appeal such a decision of the Zoning Administrator to the Board. Any party, not just the Appellant and Intervenor in this Appeal, can file an appeal under this DCMR provision. Granting DCRA's motion would thus improperly deny or limit this right of appeal by significantly shortening the filing deadline defined in Section 302.2.

6. Incorporating the revised permit into this Appeal would not be in the interest of judicial economy.

DCRA claims that "incorporating the Revised Permit into this appeal ... avoids the potential for an additional appeal of the Revised Permit" (Exhibit 36, DCRA Motion to Incorporate, at page 1). However, if B1805207 is in fact a revision permit, then a decision of the Board in this Appeal to order the revocation of permit B1706219 will necessarily make the revised permit invalid, thus avoiding a costly additional appeal. This is for several reasons:

- a) Section 105.3.8 of the 2013 District of Columbia Building Code, 12 DCMR A (the "Building Code") states that "a revision permit shall become invalid upon expiration of the original building permit it amends". Thus the revocation of permit B1706219 in this appeal should result in the invalidation of the Revised Permit. Moving forward with this appeal without incorporating the Revised Permit is thus the most straightforward way to resolve all the zoning issues raised by the proposed construction in both permits. This path also reduces the considerable burden of the Appellant to produce a detailed technical and legal analysis of permit B1805207 as part of a new appeal as described in ANC 6C's Memorandum of Opposition (Exhibit 37).
- b) The revised permit B1805207 clearly is not in compliance with the Zoning Regulations as they existed on the date of its issuance. Title 11, Subtitle E, Section 205.4, which came into effect after issuance of the permit in this appeal, prohibits a rear addition from extending more than 10 feet past the rear wall of any adjacent dwelling (See 11 DCMR E § 205.4). The rear addition in the Revised Permit extends approximately 57 feet past the rear wall of the Intervenor's house. The Zoning Administrator may have improperly approved the Revised Permit under the false interpretation that this new matter-of-right permit could be grandfathered in based on the earlier issuance of B1706219 in error.

7. The interest of judicial economy is not served by yet another continuance.

DCRA has cited judicial economy as a basis for several motions to continue this Appeal. Yet, as Intervenor previously noted in person at the January 24 hearing, counsel to DCRA's oral

statements at that hearing seem to indicate that DCRA recognizes that permit B1706219 does not comply with the Zoning Regulations (January 24 transcript, at pages 16-17).

Further postponement under these circumstances does not serve judicial economy. Rather, it serves only to increase costs and effort required by the Appellant and Intervenor, an unrepresented party in this Appeal, to ensure that neighboring properties' access to light and air is protected as envisioned by the Zoning Regulations.

CONCLUSION

For the reasons stated above and in Appellant's Memorandum of Opposition (Exhibit 37), I urge the Board to deny both DCRA's Motion to Continue and Motion to Incorporate by Reference. In the event the Board does not deny the motions summarily, I request an opportunity to be heard in person.

Respectfully Submitted,



Kevin Cummins
1123 7th Street NE
Washington DC, 20002
Telephone: (202) 725-4735
E-mail address: kevin.cummins11@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 30, 2018, I served a true and correct copy of the foregoing by electronic mail to the following individuals at the address below:

Matt LeGrant
Zoning Administrator
Department of Consumer and Regulatory Affairs
matthew.legrant@dc.gov

Charles Thomas, Esq.
General Counsel
Department of Consumer and Regulatory Affairs
charles.thomas@dc.gov

Anna Kaprelova, Esq.
Department of Consumer and Regulatory Affairs
anna.kaprelova@dc.gov

John Patrick Brown, Jr., Esq.
Greenstein DeLorme & Luchs, P.C.
jpb@gdllaw.com
Counsel for Property Owner, Atlas Squared, LLC

Mark Eckenweiler, Esq.
Commissioner
ANC 6C
6C04@anc.dc.gov
Counsel for Appellant



Kevin Cummins